

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BYRON KING and CAITLIN STEVENS,

Plaintiffs,

v.

ON THE RECORD, INC., and DOES 1-25,

Defendants.

Case No. 12-cv-6271 JSC

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR CONDITIONAL  
CERTIFICATION (Dkt. No. 34)**

In this Fair Labor Standards Act (FLSA) case, Plaintiffs allege that Defendants unlawfully denied “Case Manager” employees overtime and compensation for missed meal and rest breaks due to their misclassification as exempt employees. Now pending before the Court is Plaintiff’s motion for conditional certification of a collective action. (Dkt. No. 34.) In support of their Reply, Plaintiffs’ submitted new evidence. As a result, at the January 16, 2014 hearing on Plaintiffs’ motion the Court gave Defendant leave to file a supplemental response should it choose to do so, provided it do so within the week. (Dkt. No. 40.)

1 Defendant apparently chose not to file anything written in addition to the arguments made at  
2 the hearing and the motion is now submitted. Because Plaintiffs have made an adequate  
3 showing that they are similarly situated to the other five to seven (at most) Case Managers in  
4 the putative class, the Court GRANTS Plaintiffs' motion.

### 5 BACKGROUND

6 During the liability period, Defendant employed approximately 12 to 15 people in three  
7 offices. (Dkt. No. 39-1 at 23-24.) Plaintiff Byron King has been employed as a Case  
8 Manager for Defendant since 2004, while Plaintiff Caitlin Stevens held the position from  
9 April 2010 to May 2012. Case Managers provide "media support for law firms," with  
10 responsibilities such as "setting up and operating media equipment . . . during trials, sync  
11 deposition transcripts to video, and converting computer files." (Dkt. No. 34 at 3.) Although  
12 Plaintiffs had a 9-to-5 schedule, they allege they were required to work outside of those hours,  
13 including working later or responding to work-related emails at home. When the attorneys  
14 they supported were working on a trial, Plaintiffs typically worked 16 hours a day without  
15 meal or rest breaks. The billing records Plaintiffs were required to submit "would not  
16 evidence the full extent of their hours" because they sometimes did not include the work  
17 outside of their 9-to-5 hours.

18 About five to seven other Case Managers worked for Defendant during the liability  
19 period of "December 11, 2009 and thereafter." (Dkt. No. 34 at 8.) According to Plaintiffs,  
20 the other Case Managers were subject to the same duties, as well as Defendant's expectations,  
21 time-keeping policies, and refusal to compensate for overtime. Plaintiff King worked  
22 alongside other Case Managers "during trials and spoke to them personally about their job  
23 duties." (Dkt. No. 39-2 ¶ 2.) He also "spoke with management about other Case Managers'  
24 job duties and was privy to numerous emails that management sent to all Case Managers in  
25 which management discussed Case Manager duties and expressed their expectations about our  
26 availability to work after normal office hours." (*Id.*) He was told by management that Case  
27 Managers were exempt from overtime pay. (*Id.*)

1 Plaintiffs bring this lawsuit for unpaid overtime and compensation for missed meal and  
2 rest breaks based on their classification as exempt employees.

### 3 **LEGAL STANDARD**

4 Under the FLSA, employers must pay their employees a minimum wage and overtime  
5 wages for hours worked in excess of forty per week. *See* 29 U.S.C. §§ 206, 207. If an  
6 employer fails to do so, an aggrieved employee may bring a collective action on behalf of  
7 “similarly situated” employees based on their employer’s alleged violations of the FLSA.  
8 *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000). The  
9 decision as to whether to certify a collective action is within the discretion of the district court.  
10 *Adams v. Inter-Con Sec. Sys.*, 242 F.R.D. 530, 535 (N.D. Cal. 2007). Plaintiff bears the  
11 burden of showing that the putative collective action members are “similarly situated.”  
12 *Adams*, 242 F.R.D. at 535-36.

13 Although the FLSA does not define “similarly situated,” federal courts in this District  
14 have generally adopted a two-step approach to determine whether to permit a collective action  
15 to proceed. *Hill v. R+L Carriers, Inc.*, 690 F.Supp.2d 1001, 1009 (N.D. Cal. 2010). The first  
16 step is the “notice stage,” at which time the district court assesses whether potential class  
17 members should be notified of the opportunity to opt-in to the action. *Id.* At the second step, a  
18 party may move to decertify the class after the completion of discovery. If at that stage the  
19 court finds the opted-in class members are not similarly situated, “the court may decertify the  
20 class and dismiss opt-in plaintiffs without prejudice.” *Adams v. Inter-Con Sec. Systems, Inc.*,  
21 242 F.R.D. 530, 536 (N.D. Cal. 2007).

22 Only the first step is at issue on the pending motion. “This decision is based on the  
23 pleadings and affidavits submitted by the parties. The court makes this determination under a  
24 fairly lenient standard due to the limited amount of evidence before it. The usual result is  
25 conditional class certification.” *Adam*, 242 F.R.D. at 536; *see also Otey v. CrowdFlower,*  
26 *Inc.*, 12-CV-05524-JST, 2013 WL 4552493 \*2 (N.D. Cal. Aug. 27, 2013) (“The standard for  
27 certification at this stage is a lenient one that typically results in certification.”) (quoting *Lewis*  
28 *v. Wells Fargo*, 669 F.Supp.2d 1124, 1127 (N.D. Cal. 2009)). Plaintiffs must “provide

1 ‘substantial allegations, supported by declarations or discovery, that ‘the putative class  
2 members were together the victims of a single decision, policy, or plan.” *Luque v. AT&T*  
3 *Corp.*, 09-05885 CRB, 2010 WL 4807088 \*4 (N.D. Cal. Nov. 19, 2010) (quoting *Kress v.*  
4 *PriceWaterhouseCoopers, LLP*, 263 F.R.D. 623, 629 (E.D. Cal. 2009)).

### 5 DISCUSSION

6 Plaintiffs have met the lenient standard for conditional certification of an FLSA class.  
7 Plaintiffs seek to conditionally certify a class of all persons employed by Defendant as “Case  
8 Manager” at any time during the three years preceding the Court’s order that notice be given  
9 to the class members. Based on the evidence before the Court, there are approximately four to  
10 seven such class members; indeed, Defendant employed fewer than 20 people in three offices  
11 during this class period.

12 Plaintiff King’s declarations alone are sufficient. He has worked for Defendant since  
13 2004, and has worked with many Case Managers. Based on his own personal observations,  
14 observations made while working directly with other Case Managers, reviewing emails, and  
15 discussions with Defendant’s management, he attests that the other Case Managers, including  
16 those working from the other two offices, performed substantially similar job duties as did he  
17 and Plaintiff Stevens. Further, all Case Managers were expected to be available and did work  
18 after normal business hours, especially when they were assisting with trial. He further  
19 declares that management represented to him that Case Managers are exempt from overtime.  
20 He has also submitted Defendant’s employee handbook. The handbook states:

21  
22 Exempt employees, such as those engaged in executive or professional  
23 capacities, are not covered by the overtime provisions and thus do not receive  
24 overtime pay. Overtime is often part of the litigation business. Working  
overtime should be expected, including nights, weekends and holidays.

25 (Dkt. No. 39-2 at 11.) This evidence is sufficient to satisfy Plaintiffs’ burden at step  
26 one of showing substantial similarity and that the class members were subject to a uniform  
27 policy.  
28

1 Defendant's objections to Plaintiffs' declarations (Dkt. No. 38) does not change the  
2 result. First, the objections violated Civil Local Rule 7-3(a), which requires that "[a]ny  
3 evidentiary and procedural objections to the motion must be contained within the brief or  
4 memorandum." More importantly, however, the objections go to the weight--not the  
5 admissibility--of the testimony. While there were holes in the declarations submitted initially  
6 with the motion to certify, Plaintiff King's reply declaration fills those gaps. His testimony  
7 supports a reasonable and plausible inference that he would have knowledge of the job duties  
8 of other Case Managers and that those job duties are substantially similar to his own. While  
9 this new evidence was submitted with the Reply, at oral argument the Court gave Defendant  
10 the opportunity to file a response, with evidence, if it desired. It chose not to do so. Indeed, it  
11 has not submitted any of its own evidence and does not in fact contend that the various Case  
12 Managers at issue did not have substantially similar job duties. Accordingly, Plaintiffs'  
13 motion for conditional certification is GRANTED.

#### 14 CONCLUSION

15 For the reasons explained above, Plaintiffs' motion for conditional certification is  
16 GRANTED. As Defendant has not lodged any objection to Plaintiff's proposed notice, the  
17 Court orders that such notice be given to all Case Managers employed by Defendant for the  
18 three years preceding today's date.

19 This Order disposes of Docket No. 34.

20 **IT IS SO ORDERED.**

21  
22 Dated: January 24, 2014

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24 \_\_\_\_\_  
25 JACQUELINE SCOTT CORLEY  
26 UNITED STATES MAGISTRATE JUDGE  
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